think that the wiser course in this case is to remove the special direction from the Court of Appeal's orders that the appellant is to pay the respondents' costs "personally" and to leave him at liberty, if he is so advised, to apply in the course of his administration to be allowed all or any part of those costs and his own as proper expenses of the administration. Nothing that their Lordships have said here is to be taken as encouraging the granting of such an application which might in the end amount to no more than compelling the second respondent who has been successful to share the costs with his defeated antagonist.

For the reasons that have been given their Lordships will report to the Head of the Federation of Malaya their opinion that this appeal should be dismissed and the orders of the Court of Appeal made on the 6th October and 12th December, 1960 respectively be affirmed, subject to the minor alterations that (a) the order of 6th October should be amended by adding to it that the order of Adams J. dated 20th June, 1960 should be set aside and the appellant directed to pay to the respondents their taxed costs of the motion upon which that order was made, and (b) there should be eliminated from both the orders of 6th October and 12th December, 1960 the word "personally" where the appellant is directed to pay the respondents' costs, and (c) there should be added to those orders a provision that the appellant is to be at liberty, if so advised, to apply to the High Court in the administration of the intestate's estate for an order allowing him all or any part of the costs incurred in these proceedings out of that estate.

The appellant should pay the costs of this appeal, and should have a similar liberty.

*Appeal dismissed.*

Solicitors: *Graham Page & Co.; Lipton & Jefferies.*

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## FONG YING YONG v. REGINA

**[A. Cr. J. (Wee Chong Jin J.) February 23, 1962]**

**[Singapore — Magistrate's Appeal No. 264 of 1961]**

*Local Government Ordinance, 1957, s.169 — Erection of building without approval of plan by City Council — Person who actually erected building not known — Demolition order — Whether beneficial or strict construction to be applied — Benefit of doubt to accused.*

Where there is evidence, in a prosecution under section 169(17) of the Local Government Ordinance, sufficient to prove that the person who actually erected the buildings is not known to the local authority, a strict construction should be applied and the benefit of the doubt given to the accused.

MAGISTRATE'S APPEAL.

*R. L. Eber* (*Miss Phyllis Tan* with him) for the appellant.

*Sachi Saurajen* (Deputy Public Prosecutor) for the respondent.

**Wee Chong Jin J.:** The appellant is appealing against a conviction for the offence of erecting a building without a plan or specification having been approved by the City Council as required by section 169 of the Local Government Ordinance. She was fined $50 and a Mandatory Order was made requiring her to demolish the building. The facts were as follows:—

The appellant is the owner of a piece of vacant land known as Lot 471-2 Mukim XXIV Kallang off Lorong 3, Geylang and on that land a building, the subject matter of this prosecution, was erected. The appellant did not erect the building nor did she give anyone permission to do so.

A building inspector attached to the local authority discovered that this building together with several other similar buildings had been erected between 27th March, 1961 and the 4th June, 1961 on this piece of vacant land without any plan or specification having been approved by the local authority. Thereafter, according to his evidence, he tried his best on several occasions to find out the person or persons responsible for the erection of these buildings and in the case of this particular building he did so by asking the actual occupiers of the building. He made no inquiries from the appellant.

The prosecution relied upon section 169(17) which provides, *inter alia*, " . . . where a building is erected on vacant land . . . the building shall be deemed to have been erected by the owner of such land if the person (not being such owner) who actually erected the building is not known or cannot be found within the Colony, and the owner of the land shall be liable therefor," and the learned Magistrate accepted this contention and convicted the appellant. The question raised in this appeal is whether the appellant has been properly convicted having regard to the language of section 169(17).

Although the evidence, in my opinion, is sufficient to prove that the person who actually erected the building is not known to the local authority, the question remains, however, whether or not such evidence is sufficient to warrant a conviction where the words "to the local authority" do not appear after the phrase "if the person (not being the owner) who actually erected the building is not known".

In my opinion it is plainly legitimate to infer that the omission of the words "to the local authority" is the result of accident and that the legislature clearly intended that if the person who actually erected the building is not known to the local authority the owner of the vacant land on which the building is erected shall be liable for such erection. It may well be argued, however, that this inference based on the intention of the legislature should not be made where a perusal of the whole of section 169 shows plainly that the legislature in every instance, except sub-section (17) has used the words "to the local authority" whenever it intends the local authority to be the particular body referred to.

I confess to not knowing where the true answer lies but in this case to apply the beneficial construction would be to bring the appellant within a penal enactment and accordingly I would apply the rule of strict construction and give the benefit of the doubt to the appellant. As *Maxwell* in *The Interpretation of Statutes*, 10th Ed., at page 285 states: "The effect of the rule of strict construction might almost be summed up in the remark that, where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the legislature which has failed to explain itself."

The appeal is therefore allowed and the conviction quashed and the Mandatory Order rescinded.

*Appeal allowed.*

Solicitors: *Eber & Tan.*

## MEELAMCHAN & ANOR. v. PUBLIC PROSECUTOR

**[C.A. (Thomson C.J., Hill and Good JJ.A.) May 17, 1962]**

**[K.L. — F.M. Criminal Appeal No. 8 of 1962]**

*Criminal Law and Procedure — Identification parade — Statement made to police at — Criminal Procedure Code (Cap. 6), s.113.*

*Evidence — Evidence of identification parade — Conduct of parade by police — Evidence Ordinance, 1950, s.157.*

In this case the appellants were charged with attempted murder and both were convicted and sentenced to ten years' imprisonment each. Both appellants were the subject of identification parades conducted by the police in the course of their investigations. The trial judge rejected complainant's identification of the first appellant but accepted his identification of the second appellant because of certain evidence relating to the identification parades conducted by the police. In the first identification parade, the complainant "picked out" the appellant Raju but he failed to "pick out" Maniam the first appellant and went on and picked out two innocent persons. In the second parade, neither of the two appellants was present but the complainant again "picked out" an innocent person. The trial judge in coming to his conclusions attached considerable weight to the evidence of what happened at the identification parades. On appeal to the Court of Appeal,

**Held:** (1) evidence of what happened at the identification parades conducted by the police was not admissible in evidence; *Ramkishan* v. *Bombay State* (2), followed;

(2) what is inadmissible is not evidence of identification parades as such but only evidence of what happens at such parades in the presence of the police. The prohibition arises from the provisions of section 113 of the Criminal Procedure Code. Evidence relating to the conduct and statements of witnesses at an identification parade which consists of an accused person and a number of innocent persons of similar racial type can, however, be of very great value and if conducted by prison officials or indeed any persons of responsibility other than police officers evidence of what happens at such a parade is admissible under section 157 of the Evidence Ordinance, 1950 as corroborative of the evidence of any witness called at the trial;

(3) the appeal must be allowed and conviction set aside.

**[Editorial Note:** There were in our opinion several other unsatisfactory features in this trial which were not raised on appeal and consequently were not dealt with by the Court of Appeal. In the first place the charge was bad on the face of it on two grounds. Firstly, if the common intention was merely to cause hurt as alleged in the charge, the charge of attempted murder could not stand against Maniam the first appellant who did not stab Arumugam. Secondly, as section 34 of the Penal Code was invoked the charge should have named the person or persons who did the actual stabbing of Arumugam. Furthermore evidence was led at the trial that the first appellant Maniam fatally stabbed one Suppiah. This evidence in our opinion was inadmissible as it was irrelevant to the charge and even if it was admissible it should have been excluded on the ground that it was highly prejudicial to the first appellant. The evidence in this case as we understand it was that the two appellants Maniam and Raju attacked two others, namely Arumugam and Suppiah causing serious injuries to both of them. Suppiah died on the spot and Arumugam would have died if not for prompt and expert medical attention. In our opinion the two appellants should have been jointly charged and tried on two counts, firstly, murder of Suppiah and secondly, attempted murder of Arumugam. In our opinion, the whole incident was a single transaction in which the circumstances of the stabbing made out a common intention on the part of both appellants to kill Arumugam and Suppiah. They succeeded in killing Suppiah and failed to kill Arumugam only because he was saved by the surgical skill of the doctor who operated on him. The judgment of the Court of Appeal in this case is of paramount importance as it deals fully with a point of law on which there had been no authoritative pronouncement in the past. The question of police identification parades has vexed the minds of lawyers both in Malaya and in India because of the special identical statutory provisions in both countries which prohibit the tendering in evidence at a trial of any statement made in the course of police investigations. The judgment of the Court of Appeal has made new law and has sounded the death knell of police identification parades which in future shall be valueless so far as admissible evidence is concerned].

*Cases referred to:—*

(1) *Lee Lian & Ors.* v. *Public Prosecutor* [1956] M.L.J. 191.

(2) *Ramkishnan* v. *Bombay State* A.I.R. 1955 S.C. 104; [1955] 1 S.C.R. 903.

(3) *Nagalingam & Ors.* v. *Public Prosecutor* [1957] M.L.J. 196.

COURT OF APPEAL (CRIMINAL).

*R. Ponnudurai* for the appellants.

*H. Sankey* (Deputy Public Prosecutor) for the respondent.

*Cur. Adv. Vult.*

**Thomson C.J.:** These appellants were tried together in the High Court at Kuala Lumpur on the following charge:—

"That you, jointly with others still at large, on 10th September, 1961, at about 5.30 p.m. at Kampong Chetty, off Circular Road, Kuala Lumpur, in the State of Selangor, with the common intention to cause hurt, did an act, to wit, stabbed with a knife one Arumugam s/o Palani, in the furtherance of such common intention, with such knowledge and under such circumstances that if by that act you had caused the death of Arumugam s/o Palani you would have been guilty of murder and that you have caused hurt to the said Arumugam s/o Palani, and that you thereby committed an offence punishable under section 307 and section 34 of the Penal Code."

They were both convicted and each of them was sentenced to 10 years' imprisonment. Against these convictions and sentences they have now appealed.